

patent, for them to shew, that the State had previously parted with its right of soil to any one else; or that this ground was not the subject of a grant from the land office. To shew which they urged, that this ground was an extension, not of any land belonging to John Smith, or those claiming under him, but of a part of Gay street; and consequently belonged as a rightful incident to the patentee of Cole's Harbor, or those claiming under him; who alone were the owners of the ground over which Gay street passed, and the incidents and appurtenants thereto. Or, if, indeed, the right of soil in this strip of land had not accrued to and vested in those holding under the patent for Cole's Harbor, as a legal incident of their title; yet, that the ground in question, in its present condition, charged as it was with a public use, was not the proper subject of a grant from the land office.

The land office has always been, as it now is, the general market in which all public lands have been offered for sale; and into which any one capable of holding real estate might come and purchase according to the prescribed rules and terms of sale. This office, so peculiar in its nature, evidently originated from the circumstance of the right of soil of the whole country having been vested exclusively in the Lord Proprietary as a part of his private estate; and from the whole territory being at that time vacant, and held by tribes of savages in their national capacities, and not as * property belonging to individuals in separate parcels.

156 *Gifford v. Lord Yarborough*, 15 *Com. Law Rep.* 405. The charter of Maryland not only vested the right of soil in the Lord Proprietary, but it also clothed him with certain political and regal powers within his Province; and hence, in establishing a land office, and laying down rules for the sale of the great body of his real estate, he followed, in many respects, the forms which had been adopted in England for the purpose of preventing fraud and imposition in obtaining grants of property from the king; and all grants of land here were accordingly required to pass under the supervision of the Chancellor; and to be attested by the great seal of which he was the keeper. If the rules of the office were complied with, and the purchase money paid, a grant for the land was issued as of course, otherwise not. *Cunningham v. Browning*, 1 *Bland*, 299. Among the earliest Acts of the Provincial Legislature was one, which declared it to be illegal for any individual to purchase lands of the Indians to the prejudice of the rights of the Lord Proprietary. 1649, ch. 3; 1798, ch. 82, s. 7; 1802, ch. 45; 1816, ch. 136.

The mode of proceeding for the purpose of contesting the right to a patent by a caveat, being interposed against its issuing, was substantially the same here as in England. *Cunningham v. Brown-*